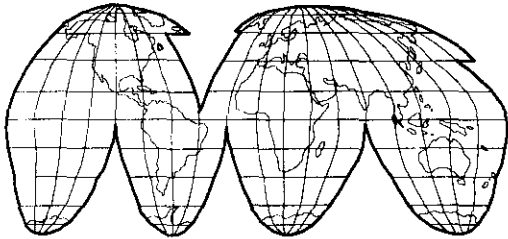


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Center on Democratic Communications

National Lawyers Guild

240 Stockton Street, 3rd Floor

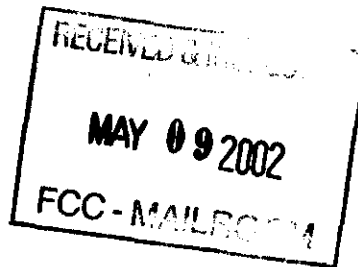
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April 25, 2002

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington DC 20554

Re: *Ex Parte* presentation in MM Docket 99-25

Dear Ms. Dortch:

Last week, on April 16, John Crigler and I conducted a meeting in the above-captioned docket. We met with Roy Stewart, Peter Doyle, and Brian Butler of the Media Bureau. We discussed a memorandum, which I had addressed to Roy Stewart (with copies to the Commissioners), with respect to issues arising in connection with the processing by the Media Bureau of the large number of LPFM Applications, which had been received. We discussed the level of review given to applications by staff, and Stewart, Doyle and Butler explained the mechanics of Application processing and gave some indication of the present schedule on this matter.

We encouraged the Commission to process LPFM applications with as much speed as possible. We stressed that applicants which have small staffs or rely on volunteers cannot succeed if processing unduly delays them.

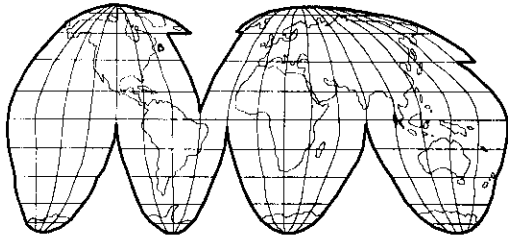
I enclose a copy of a memo to Roy Stewart sent in preparation for the meeting.

Sincerely,


Peter Franck

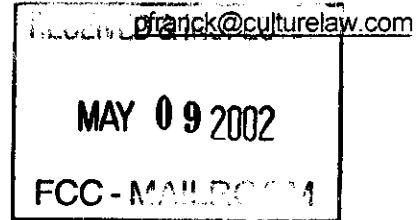
cc: John Crigler (w/out enclosure)
Roy Stewart (w/out enclosure)
Peter Doyle (w/out enclosure)
Brian Butler (w/out enclosure)

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Memo

Date: April 11, 2002

To: Federal Communications Commission, by Roy Stewart, Chief, Office of Broadcast License Policy

CC To: Chairman Michael Powell
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin

From: Peter Franck, Coordinating Attorney, Center on Democratic Communications of the National Lawyers Guild.

RE: Pending Low Power FM Applications – Serious Processing Problems

As you may know, the National Lawyers Guild Center on Democratic Communications (CDC) has been intimately involved in the drive to open up the airways to Grass Roots local based low power radio for more than fifteen (15) years. We heavily participated in the Commission's rule making process (proceeding 99-25) and, of course, were most gratified when you issued the Report and Order establishing the low power FM service in January of 2000. We feel very strongly that this new low power, local and community based service is an essential balance to the increasing consolidation of electronic media, which recent legislation, recent court decisions, as well some of your own recent decisions have been facilitating. We are committed to making LPFM work, and trust that you share that commitment. It is in that spirit that we write to you.

We are now very concerned that serious problems with the process of handling the 3,400 applications which have been filed since mid 2000 threaten the very existence of this fledging service. There are two inter-related sets of problems:

First, given the nature of these applicants, the basic pace of processing the applications is, to date, frankly very slow.

We note that of 3,400 applications filed since June of 2000, as of the end of last week, only 763 seem to have been processed at all (85 dismissed, 413 in "accepted for filing" status and 265 granted). This means that two years later 2,637 applications haven't been touched.

We understand that this is a large number of applications for your staff to handle at one time. On the other hand, we need to underscore the fact that this is a unique group of applicants, rather different in the nature and type of organization. The local, grass roots groups for whom this service was created are small, with limited or no staffs, essentially volunteer organizations. They have applied for these licenses not out of a desire to make money, nor even to start a career in radio, but simply to bring a much needed service to their communities. For many existing organizations who applied for a license an important process of consideration and decision took place before the application was filed. Often this involved finding volunteers who would take on the project of building and operating the radio stations. Now, in many cases two years have passed, without any action, usually without any word from the Commission as to the status of the applications. In such a situation people move on with their lives and their commitments. There is a very real danger, and we are seeing it happen, that by the time construction permits are issued the organizations will no longer have the people resources or the energy to build and operate the LPFM. This will result in only larger, professionally staffed organizations ending up with this license. This is not what the public urged on the FCC in this rulemaking proceeding, and it is not what was intended by the Commission in setting up the service.

Second, it is clear that some groups of applicants, or individuals purporting to act in the name of applicants are systematically abusing the process, and that this is very often going undetected by the Commission. Given the existing limitations on the number of LPFM frequencies available, the presence in the system of a large number of inappropriate applications puts many applicants into an

MX situation, when they would not find themselves in that situation if only appropriate and lawful applications had been filed. Since you have not even touched the MXd applications yet, and given the fact that absent congressional action there will be some serious bottlenecks in handling MX applications where the applicants are not able to come to point sharing agreements, this can cause literally years of delay to applicants who should not be in an MX situation at all.

We note, to our dismay that a very significant number of applications which are defective on their face have been accepted for filing or have even been granted. You have accepted for filing a large number of applications which are defective on their face, lacking for instance the names of *any* board members. You have issued Construction Permits to some of these basically defective applications. In addition, we see that a very large number of applications have been filed by the same person. For instance one individual has filed 58 applications in Florida alone, *and 17 of these have been accepted for filing.*

If you look at the Exhibit Bs which have been filed by a variety of applicants with similar sounding names you will see "cookie cutter" texts showing up in these applications. This gives, at best, very strong suspicion that these are not truly different and separate organizations with their own plans to uniquely serve their own communities. Rather there are dozens to hundreds of applications with exactly the same texts.

Another example: There is a large group of applications where the addresses given are clearly not real: just in the last few days the Micro Radio Implementation project (MIP) which is sponsored by the United Church of Christ through its local church groups has determined that at least 3 of the addresses given in the recently accepted for filing Florida applications are vacant lots. We are saddened to notice that except for the group of commercial applicants discussed above) most of the applications which don't "check out" are done in the name of religious organizations, but MIP has determined from leaders of the Florida Council of Churches that no one has heard of these religious groups. It is very doubtful that they exist.

We were also very concerned to see that a group of applications appeared with commercial (i.e. not non-profit) sounding names, some of which have been accepted for filing, in fact several of these have been issued construction permits, and at least one is on the air. Alerted by their names we

checked the records of the Secretaries of State of several states in which they were incorporated, and found that in fact they were for profit organizations, clearly ineligible for LPFM licenses.

There is a group of applications, filed for licenses in several states, including Colorado, Idaho, and North Carolina, which list only a Texas address, and in fact list a board, all of whose members have Texas addresses. *These have been accepted for filing.*

There are several groups of applications with exactly identical names, except for a change of city name, or in some cases a religious saint's name. It turns out that in all these cases the contact person or the principle behind the application is the same person. One person has filed 70 applications around the country!

We understand that Commission staff traditionally relies upon broadcast or other organizations, which may be effected by defective applications in various services, to review those applications and draw such problems to the attention of the Commission staff.

We need to point out to the Commission that because of the very different nature of this grass roots, local and largely volunteer non-profit service, the Commission staff's normal reliance on potentially competitive operators to ferret out defects in license applications, just does not work. To carry into practice your very good intentions in creating the LPFM service you will need to adapt your processing procedures to the nature of the service and the nature of the applicant organizations.

Our small organizations, working with very limited funding and no full time staffs simply do not have the resources to do the job of enforcing the rigorous and carefully considered rules you adopted for LPFM.. The FCC policy , appropriate to services where the parties are major organizations, of only looking at Informal Objections or (necessarily) Petitions to Deny, after an application is accepted for filing, in the present situation causes highly prejudicial delays to bona fide applicants.

We can, based on our experience to date, and knowledge of the community of genuine lpfm-interested grass roots groups, suggest to you some of the 'red flags' to look for; the indicia that an application needs further scrutiny or investigation: As pointed out above there are a very large number filed by one person, some by one actual applicant, some by one 'consultant' listed as the

contact person and bearing little relation to the applicant (in terms of address, name, state, and the like), there are large groups of applications with almost identical names (where the only variant is the name of a town, or in some cases the name of a saint); there are a significant number of applications where *no* board members are listed; there are often internal contradictions between the answers given in the legal section and the facts claimed in the points section, and of course there are a large number with perfunctory and identical language in Exhibit 2.

For these reasons we are asking the Commission to assign sufficient staff to process the remaining 2,637 applications in a prompt and timely manner. We further ask the Commission to apply sufficient resources so that these applications can be studied closely for appropriateness, and cross-checked against each other to reveal whether the same parties are in fact filing multiple applications in violation of the Regulations. Where there is reason to suspect that the facts as represented in the applications are not as claimed, sufficient investigative staff (from your Enforcement Bureau, if appropriate) must be assigned to investigate the facts, as we have been doing, and where there are clear cases of perjury (since all statements on the applications are made under penalty of perjury) we would ask that you refer them to the appropriate United States Attorney's offices for proper legal action.

We, and those working with us, have already filed more than 70 Informal Objections¹. We would ask that those be promptly reviewed and processed. Doing so will be "*in the interest of justice*" as we lawyers say, and it will make it clear to your staff what patterns of inappropriate application features they must be on the lookout for. It will also reassure the LPFM community that their wait for construction permits will not be limitless, and that only appropriate applicants will, in fact, be granted construction permits and licenses.

We note that all applications are submitted under penalty of perjury, and that applicants are charged with, and in the application claim to, know the applicable law and regulations. We would ask that you refer to the Enforcement Bureau for appropriate investigation and action those individuals filing large number of applications which are clearly defective on their face.

We look forward to being in prompt dialogue with you and the staff of the Office Of Broadcast License Policy so that these processing resources and policies can be put in place so that LPFM will be a reality, not a 15 minute wonder..

Very truly yours,

Peter Franck

Peter Franck
Coordinating Attorney, CDC

¹ We anticipate filing at least 17 more Informal Objections in the next week alone, relating to applications which you have recently noted as accepted for filing, but which contain obvious defects on their face in many cases, and clearly discoverable defects upon simple investigation in others.